



“Investing in Africa’s future”

COLLEGE OF BUSINESS, PEACE, LEADERSHIP & GOVERNANCE

NPHR504: INTERNATIONAL CRIMINAL LAW & TRANSITIONAL JUSTICE

END OF SECOND SEMESTER EXAMINATIONS

MAY 2021

LECTURER: C. MUNGUMA

DURATION: 7 HOURS

INSTRUCTIONS

Answer **ONE** question

You have 7 hours to complete and **submit your answer to the University Moodle platform.**

You are encouraged to provide appropriate references where necessary in your work. Anti-plagiarism tools will be used to assess your answer for any form of exam misconduct. Any cases of positive exam misconduct will be punished in terms University Regulations.

Question 1

At the height of civil war in one African country the Save enclave was attacked by the government army. The Save enclave is an island region located in the western part of the country. A fierce battle ensued and the resistance army made a lot of successes against the government forces. The Save enclave is a major hideout of the resistance army led by General Gouveia. Most supporters of the Resistance Army are of the Shana ethnic group. This group is mostly made up of Muslims. Muslims are 80 percent of the population while 15 percent of the population are Christians and the rest are traditionalists. As a result of the failure of the government forces in subduing General Gouveia's army, a decision is made by the president of the Republic and the Army General to use any means necessary to wipe out the Save Enclave forces as well as their main supporters the Shana ethnic group. A total war against the region and its occupants is declared by government. Government forces are instructed not to "spare any one" in the region and to "nip the secessionist resistance by any means necessary".

Sniper a sergeant in the government army is in charge of platoon of 30 soldiers. During one attack Sniper orders his men to separate Shana Muslim men from women and children. Subsequent to the separation these people are taken to various sites where they are executed at point blank range. These men and women were ordinary civilians. Before the women were executed they were sexually attacked through gang rapes, forced exposure and other sexual assaults. These victims are not given any food throughout their ordeal which ranged from 5 to 14 days for some of them. A total of 600 captured children disappeared without trace but it is assumed that they were all killed in a bomb attack. All resistance fighters who are captured, injured or sick are shot on sight by the government forces. The policy of the government is not to keep any prisoners of war and not to render any assistance to injured enemy soldiers. A total of 300 injured combatants are killed this way.

Sniper participated in the killing of Shana Muslim men who were taken to Pedro farm, situated near the border. By his own admission Sniper killed in excess of 15 men under instructions from his commander. During his trial for committing various crimes before the ICC Sniper admitted to killing civilians but said he had no other choice. He explained that he had some valid defences excusing his conduct. He explained that he was threatened with instant death if he refused to obey. 'If you don't want to do it, stand in line with the rest of them!'. In fact according to Sniper 2 of his colleagues who refused to shoot the civilians were immediately executed in full view of the other soldiers and the civilians. Their bodies were disposed in the same pit with the slain civilians. Evidence from the excavations of the pits seemed to support the fact that they were bodies of dead government soldiers in the pits.

- a) From the above facts discuss the charges that Sniper and his colleagues could face in court? Assume that a total of 500 civilian men and 500 boys were killed during that encounter. Men and boys were deliberately rounded up and taken to Pedro farm for killing. Justify your answer **[40 marks]**

- b) As the legal defence team of Sniper and his colleagues (including Sniper's commander) analyse the defences that you can raise in favour of Sniper and his team on the above facts and circumstances. You are required to provide your main defence as well as the alternative defences if any, that you can raise. **[40 marks]**
- c) Analyse the importance of the Rwanda Genocide trials to modern international criminal law. **[20marks]**

Question 2

During an armed struggle in the republic of Bema, Tarzin (T) worked as caretaker of a 75 000 seater stadium located in the capital city of the town. Prior to becoming a caretaker T had been a police officer in the anti-riot police of Bema. As a former police officer T was aware of basic criminal law. In addition to his duties as a stadium caretaker T also supported the ruling party of Bema that was led by General Gouveia. Unknown to the public T was also an intelligence informer supplying key information to the security branch of Bema.

As a result of the fighting the government forces removed residents of Chetty town from their homes and put them in holding camps and concentration camps. This was done to prevent the public from supporting and giving food and other supplies to the secessionist forces of General Love. The camps were overcrowded with inadequate ablution facilities, sleeping quarters and generally all the required facilities for humans. Some of the residents were placed in the stadium that T was responsible for. A total of 2 000 women and 1000 boys below the age of 18 were in the stadium. One day T discovered that the women were secretly sending supplies to general Love's men through the young men. The young boys would smuggle the items using storm water drains as their access points. After T passed this intelligence to the authorities a decision to kill the occupants of the stadium was hatched.

In pursuance of this decision, the military decided to bring down the stadium using bull dozers. This was going to be done at night when the stadium occupants were asleep. When T was engaged on this plan he volunteered to show the bull dozer operators the main pillars that supported the stadium. The main pillars were two in number. As a result the stadium was brought down during the dead of the night while its occupants were asleep. Of the 3 000 occupants only 600 people survived the attack. This number was made up of 200 women and 400 boys who escaped from the stadium through storm water drains, manholes and sewage pipes. Both T and general Gouveier's commander M are being charged before the ICC for the stadium massacre of 2400 civilians. In particular the ICC prosecutor is arguing that T 'knew that there were approximately 3 000 women and children in the stadium and that the destruction of the stadium would necessarily cause all their immediate death'.

- a) In your view what offences/crimes should be preferred against General M and T? support your answer fully **[10 marks]**
- b) Based on the above facts can M and T be convicted of any of the international crimes that you discussed in 'a' above? Justify fully. **[40 marks]**

- c) Would M have any defence to the charges if he can show that the decision to destroy the stadium came from the president General Gouveia who gave written instructions for the destruction of the stadium together with its occupants? **[30marks]**
- d) Based on the experience of ad hoc tribunals and the Nuremburg trials discuss how aspects of “victor’s justice” can be resolved in the handling of trials after major wars. **[20marks]**

Question 3

- a) The Republic of Yemba an African country has three universities, 4 polytechnic colleges and 3 teachers colleges. All students’ in tertiary education institutions receive a government grant that covers their fees and a living allowance. After the government announced the scrapping of the educational grants all the tertiary institutions’ students went on a demonstration. The demonstrators congregated at Heroes Square located in the capital city Hillary. For 6 days over 15 000 young men and women were at the square day and night. On the 7th day the Minister of Interior announced that the government was going to move in with “force against the foreign sponsored students” if the students persisted with their action.

True to the government threat on the 8th day the Commando Unit of the army, riot police and security intelligence descended on the protesting students. Live ammunition, tear smoke, water cannons and dogs were used indiscriminately against anyone who was found at the Heroes Square and in the vicinity of Hillary City. As a result, a number of ordinary workers who were going about their business were caught in the cross fire. The protesting students scattered all over town. A section of the students numbering about a thousand started to fight back using stones, catapults and anything they could access. In response, the Commando brought helicopter gunships and armoured tankers. As a result of the assault 500 students were killed and many are injured. The injured are rounded up and put in detention without trial or medical care. A total of 600 students find themselves in detention.

After the demonstrations are quelled the secret police and intelligence unit follow up on the perceived leaders of the students. These are rounded up and imprisoned in unknown facilities. The family members, spouses or legal representatives are not allowed access to the arrested student leaders. Of the 15 student leaders only 3 escaped the arrests while the rest’s whereabouts are unknown. A week later 3 of the arrested student leaders are picked from a remote road side seriously wounded and unable to talk. One of them subsequently dies from the injuries. Medical examinations reveal that all the three were brutally assaulted and tortured by beatings, electrical shocks and other serious forms of inhuman treatment.

The detained students only appear in court charged of various violence related crimes 40 days after their arrests. The courts refuse to remand the accused persons on the basis that they had been illegally detained for a long time.

1. As the Prosecutor handling the above case explain the charges that you will prefer against the following:

- i) The President of the country who gave written instructions to the Army to use military force against the students. Secondly, assuming there were no written instructions, will that change the possible charges that could be preferred.
- ii) The Military generals who authorised the army to use helicopter gunships and armoured tankers against the unarmed students.
- iii) The Minister of Interior,
- iv) The individual commanders who were on the ground during the attack on students.
- v) The Secret Police who arrested and detained the students.

[50marks]

b) Discuss the defences that the counsel for the defendants will raise for the president, generals and the secret police. **[20marks]**

c) Discuss the advantages and disadvantages of a permanent court like the ICC as opposed to *ad hoc* tribunals constituted to deal with specific matters. **[30marks]**

END OF EXAMINATION
